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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 MICHELLE K. GODFREY,
13 Individually and on Behalf of All Others
14 Similarly Situated,
15 Plaintiff,

16 vs.

17 THE IRVINE COMPANY, LLC,
18 REALPAGE, INC.; GREYSTAR REAL
19 ESTATE PARTNERS, LLC; LINCOLN
20 PROPERTY CO.; FPI
21 MANAGEMENT, INC.; MID-
22 AMERICA APARTMENT
23 COMMUNITIES, INC.; AVENUE5
24 RESIDENTIAL, LLC; EQUITY
25 RESIDENTIAL; ESSEX PROPERTY
26 TRUST, INC; THRIVE
27 COMMUNITIES MANAGEMENT,
28 LLC; and SECURITY PROPERTIES
INC.,
Defendants.

Case No. 8:22-cv-2082

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1
2 1. Plaintiff Michelle K. Godfrey (“Plaintiff”) challenges a cartel among
3 lessors of multifamily residential real estate leases (“Lessors”) to artificially inflate
4 the prices of multifamily residential real estate in the United States above competitive
5 levels.

6 2. Until approximately 2016, and potentially earlier, many of the nation’s
7 largest Lessors priced their leases based upon their own assessments of how to best
8 compete against other Lessors. Lessors generally priced their units competitively to
9 maximize occupancy (that is, maximizing output). Lessors had an incentive to lower
10 their prices to attract lessees away from their competitors, until all available leases
11 were sold. In this way, competition drove rent levels to reflect available supply of
12 rental units and lessee demand. Lessors also independently determined when to put
13 their leases on the market, resulting in unpredictable supply levels—a natural
14 phenomenon in a competitive market. When supply exceeded demand, Lessors cut
15 prices.

16 3. As a former industry executive explained, the market structure is “a
17 classic prisoners’ dilemma.” Since residential real estate is a perishable resource (if
18 a unit sits vacant for a month, a Lessor can never monetize that lost month of rent),
19 Lessors favored a strategy of keeping “heads in the beds,” a term for offering
20 sufficiently attractive lease pricing to maximize physical occupancy levels in
21 multifamily residential real estate properties. Thus, that industry executive opined,
22 while all Lessors “would be better off limiting their rent reductions [discounts],” if
23 any Lessor “lower[ed] their rents while the others don’t, then that [Lessor] would
24 outperform.”

25 4. However, beginning in approximately 2016, and potentially earlier,
26 Lessors replaced their independent pricing and supply decisions with collusion.
27 Lessors agreed to use a common third party that collected real-time pricing and
28 supply levels, and then used that data to make unit-specific pricing and supply

1 recommendations. Lessors also agreed to follow these recommendations, on the
2 expectation that competing Lessors would do the same.

3 5. That third party is RealPage, Inc. (“RealPage”). RealPage provides
4 software and data analytics to Lessors. RealPage also serves as the mechanism by
5 which Lessors collude and avoid competition, increasing lease prices to Plaintiff and
6 other members of the proposed Class. RealPage openly boasts that its services
7 “balance supply and demand to maximize [Lessors’] revenue growth.” And that is
8 precisely what RealPage has done, facilitating an agreement among participating
9 Lessors not to compete on price, and allowing Lessors to coordinate both pricing and
10 supply through two mutually reinforcing mechanisms in furtherance of their agreed
11 aim of suppressing price competition for multifamily residential real estate leases.

12 6. First, Lessors “outsource daily pricing and ongoing revenue oversight”
13 to RealPage, replacing separate centers of independent decision-making with one.
14 RealPage collects up-to-the-minute data on the historical and contemporaneous
15 pricing from participating Lessors, data that, according to RealPage, is updated
16 “every time [Lessors] make or change a [lease] renewal offer,” spanning over “16
17 million units,” which is a “very large chunk of the total inventory in the country.” It
18 standardizes this data to account for differences in the characteristics or “class” of the
19 property in question, and then sets prices for participating Lessors using a common
20 formula. RealPage touts that it sets pricing for Lessors’ “properties as though we
21 own them ourselves”—i.e., the participating Lessors’ cartel replicates the market
22 outcomes one would observe if they were a monopolist of residential leases, which
23 is the goal of any cartel.

24 7. While Lessors are able to reject the RealPage pricing through an onerous
25 process, RealPage emphasizes the need for “discipline” among participating Lessors.
26 To encourage adherence to its common scheme, RealPage explains that for its
27 services to be most effective in increasing rents, Lessors must accept the pricing at
28 least eighty percent of the time. These efforts are successful, with a RealPage

1 employee explaining that as many as 90 percent (and at least 80 percent) of prices are
2 adopted by participating Lessors without any deviation. As one Lessor explains,
3 while “we are all technically competitors,” RealPage “helps us work together,” “to
4 work with a community in pricing strategies, not to work separately.”

5 8. Second, RealPage allows participating Lessors to coordinate supply
6 levels to avoid price competition. In a competitive market, there are periods where
7 supply exceeds demand, and that in turn puts downward pressure on market prices as
8 firms compete to attract lessees. To avoid the consequences of lawful competition,
9 RealPage provides Lessors with information sufficient to “stagger” lease renewals to
10 avoid oversupply. Lessors thus held vacant rental units unoccupied for periods of
11 time (rejecting the historical adage to keep the “heads in the beds”) to ensure that,
12 collectively, there is not one period in which the market faces an oversupply of
13 residential real estate properties for lease, keeping prices higher.

14 9. By staggering lease renewals to artificially smooth out natural
15 imbalances of supply and demand, RealPage and participating Lessors also eliminate
16 any incentive to undercut or cheat on the cartel (avoiding a race to the bottom, or
17 “prisoner’s dilemma”). This is a central mantra of RealPage, to sacrifice “physical”
18 occupancy (i.e., to decrease output) in exchange for “economic” occupancy, a
19 manufactured term RealPage uses to refer to increasing prices and decreasing
20 occupancy (output) in the market.

21 10. RealPage’s and participating Lessors’ coordinated efforts have been
22 effective at driving anticompetitive outcomes: higher prices and lower occupancy
23 (output). RealPage brags that participating Lessors experience “[r]ental rate
24 improvements, year over year, between 5% and 12% in every market.” One Lessor
25 said that the net effect of raising rents and “pushing people out” of the residential real
26 estate leases they could no longer afford, was “10 million in income.” As discussed
27 below, RealPage and participating Lessors have accomplished this task even under
28 market downturns such as the Covid-19 pandemic.

1 including each of the ten largest multifamily property management companies in the
2 U.S.

3 15. Lessor Defendant Greystar Real Estate Partners, LLC (“Greystar”) is a
4 Delaware limited liability corporation headquartered in Charleston, South Carolina.
5 It is the largest manager of multifamily rental real estate in the United States, with
6 more than 782,900 multifamily units and student beds under management nationally.
7 On information and belief, Greystar earns billions of dollars per year in revenue,
8 controls \$35.5 billion dollars in assets, and employs over 20,000 people.

9 16. Lessor Defendant Lincoln Property Co. (“Lincoln”) is a Texas
10 corporation headquartered in Dallas, Texas. Lincoln is the second largest manager
11 of multifamily rental real estate in the United States, with over 210,000 multifamily
12 units under management nationally. On information and belief, Lincoln earns
13 billions of dollars per year in revenue and employs thousands of people.

14 17. Lessor Defendant FPI Management, Inc. (“FPI”) is a California
15 corporation headquartered in Folsom, California. FPI is the fifth largest manager of
16 multifamily rental real estate in the United States, with over 150,000 multifamily
17 units under management in 17 states. On information and belief, FPI earns billions
18 of dollars per year in revenue and employs thousands of people.

19 18. Lessor Defendant Mid-America Apartment Communities, Inc.
20 (“MAA”) is a Tennessee corporation headquartered in Germantown, Tennessee.
21 MAA is the tenth largest manager of multifamily rental real estate in the United
22 States, with over 100,000 multifamily units under management in 16 states. On
23 information and belief, MAA earns over one billion dollars per year in revenue and
24 employs over 2,400 people.

25 19. Lessor Defendant Avenue5 Residential, LLC (“Avenue5”) is a
26 Delaware limited liability company headquartered in Seattle, Washington. Avenue5
27 is the twelfth largest manager of multifamily rental real estate in the United States,
28 with over 96,900 multifamily units under management in 12 states. On information

1 and belief, Avenue5 earns over \$500 million dollars per year in revenue and employs
2 over one thousand people.

3 20. Lessor Defendant Equity Residential (“Equity”) is a Maryland real
4 estate investment trust headquartered in Chicago, Illinois. Equity is the sixteenth
5 largest manager of multifamily rental real estate in the United States, with over
6 80,000 units under management in eight states. On information and belief, Equity
7 earns over 2 billion dollars per year in revenue and employs over 2,000 people.

8 21. Lessor The Irvine Company, LLC (“Irvine”) is a Delaware limited
9 liability corporation headquartered in Newport Beach, California. Irvine is the
10 twenty-third largest manager of multifamily real estate in the United States, with over
11 63,000 units under management in five states. On information and belief, Irvine earns
12 millions of dollars per year in revenue and employs over 1,000 people.

13 22. Lessor Defendant Essex Property Trust, Inc (“Essex”) is a Maryland
14 corporation headquartered in San Mateo, California. Essex is the twenty-fourth
15 largest manager of multifamily rental real estate in the United States, with over
16 61,000 units under management in California and Washington. On information and
17 belief, Essex earns over 1.4 billion dollars per year in revenue and employs over
18 1,700 people.

19 23. Lessor Defendant Thrive Communities Management, LLC (“Thrive”) is
20 a Washington Limited Liability Company headquartered in Seattle, Washington.
21 Thrive has over 18,000 units under management in the greater Pacific Northwest. On
22 information and belief, Thrive earns millions of dollars per year in revenue and
23 employs over 500 people.

24 24. Lessor Defendant Security Properties Inc. (“Security Properties”) is a
25 Washington corporation headquartered in Seattle, Washington. Security Properties
26 has over 22,000 units under management in eighteen states. On information and
27 belief, Security Properties earns millions of dollars per year in revenue.
28

32. From the perspective of the consumer, multifamily rental apartment units are not an economic substitute for with apartments, condominiums, or homes for purchase because, among other reasons, purchase of real estate requires the ability to make a substantial down payment and to obtain financing.

33. Additionally, from the perspective of the consumer, single-family real estate is not an economic substitute for multifamily residential real estate. For example, single-family properties typically do not offer amenities and security. Indeed, industry participants in the multifamily residential real estate market typically distinguish between multifamily and single-family real estate when discussing customer preferences and market trends, including concerning their disparate respective pricing.

34. The multifamily residential real estate lease market satisfies the test for market definition used by federal antitrust enforcement agencies, widely known as the “SSNIP test.” The test asks whether a hypothetical monopolist in a proffered market could profitably impose a small but significant (typically 5%), non-transitory increase in price (a “SSNIP”), without causing a sufficient number of customers to switch to other products or services such that the SSNIP would be unprofitable to the monopolist. If the SSNIP is profitable, the market is properly defined. If the SSNIP is not profitable, the market is too narrowly defined, and does not encompass sufficient economic substitutes.

35. Here, the SSNIP test is satisfied, and the market is properly defined. As described above and below, pursuant to the Lessors’ agreement not to compete on price, Lessors are able to increase “year over year, between 5% and 12% in every market,” yet those increases have not driven enough renters out of the market such that the SSNIP has become unprofitable to Lessors.

Historical Pricing in the Market for Multifamily Residential Real Estate Leases

36. Before RealPage facilitated collusion among Lessors, Lessors acting independently followed a policy to keep “heads in the beds.” In simplest terms, this

1 meant the market was functioning competitively. Lessors, concerned that every day
2 a property remained unrented was a lost opportunity to earn revenue for that day,
3 offered sufficiently attractive pricing to maintain maximum “physical occupancy”
4 across their units. This could come in the form of reduced prices—often termed
5 concessions—such as “first month free.”

6 37. The “heads in the beds” strategy also minimized turnover expenses, as
7 there were hard costs associated with finding and evaluating a replacement tenant as
8 well as lost revenue opportunities if the unit sat vacant between tenants.

9 38. One industry participant described the market before RealPage’s
10 arrival, stating that a “generation” of Lessors “grew up worshipping the occupancy
11 gods. We learned that if you were not 95 percent-plus occupied, the asset was
12 failing.”

13 39. Lessors accomplished their goals of “worshipping the occupancy gods”
14 and “keeping heads in the beds” through “manual pricing,” that is, uncoordinated,
15 independent pricing. This led Lessors to maximize occupancy (output) by offering
16 sufficiently low pricing to attract tenants to sign or renew existing leases. This is
17 referred to as a market share over price strategy, and it is a common defining
18 characteristic of a market that is functioning competitively.

19
20 **The Lessor Defendants’ Outsource Price and Supply Decisions to a Common**
21 **Decision Maker—RealPage—Which Eliminated Competition**

22 40. Following RealPage’s entry, RealPage’s participating Lessors swiftly,
23 and concertedly, shifted from the previous competitive market share over price
24 strategy to a new collusive price over volume strategy. Price over volume is a
25 hallmark of pricing in a cartelized market.

26 41. RealPage and participating Lessors have adopted a philosophy of
27 economic occupancy, which is a term RealPage uses to refer to the practice of
28 increasing prices notwithstanding market conditions and tolerating any reduced

1 physical occupancy that might engender. Since Lessors of residential multifamily
2 real estate properties (a finite resource) face a natural prisoner's dilemma,
3 maximizing economic occupancy is only in a firm's economic self-interest if many
4 Lessors collectively follow suit. As one industry executive explained, while all
5 Lessors "would be better off limiting their rent reductions [discounts]," if any Lessor
6 "lower[ed] their rents while the others don't, than that [Lessor] would outperform."
7 The easiest way to solve the prisoner's dilemma, such that it would be profit
8 maximizing to maintain high prices, would be if Lessors had mutual assurances that
9 other Lessors would not compete with them on price.

10 42. RealPage and participating Lessors have provided one another with
11 such mutual assurances, agreeing among themselves not to compete on price for the
12 sale of multifamily residential real estate leases. They have effectuated their
13 agreement through two mutually reinforcing mechanisms. First, participating
14 Lessors have agreed to set prices using RealPage's coordinated algorithmic pricing.
15 Second, participating Lessors have agreed to stagger their lease renewal dates
16 through RealPage, to avoid (otherwise natural) oversupplies in rental properties.

17 43. RealPage's coordinated algorithmic pricing allows participating
18 Lessors, in RealPage's words, to "outsource [their] daily pricing and ongoing
19 revenue oversight" to RealPage, with RealPage pricing participating Lessors'
20 "properties as if we [RealPage] own them ourselves"—that is, as if RealPage and its
21 participating Lessors were operating as a monopolist.

22 44. Participating Lessors agree to adhere to RealPage's coordinated
23 algorithmic pricing, often referring to such adherence as pricing "courage" or more
24 frequently, pricing "discipline."

25 45. Participating Lessors also agree to provide RealPage with real-time
26 access to their competitively sensitive and nonpublic data on their multifamily
27 residential real estate leases.
28

1 46. This data, according to RealPage, spans over “16 million units,” which
2 is a “very large chunk of the total inventory in the country.” RealPage standardizes
3 this data to account for differences in the characteristics or “class” of the property in
4 question. RealPage then runs this massive dataset through its pricing algorithm,
5 whereby RealPage sets prices for participating Lessors through application of a
6 common formula to a common dataset.

7 47. Specifically, every morning, RealPage provides participating Lessors
8 with recommended price levels. Lessors typically must communicate to a RealPage
9 “Pricing Advisor” that they have “accept[ed]” or “confirm[ed]” the “approved
10 pricing” within a specified time frame. If Lessors wish to diverge from the “approved
11 pricing” they must submit reasoning for doing so and await approval. RealPage
12 encourages participating Lessors to have daily calls between the Lessors’ employees
13 with pricing responsibility and the RealPage Pricing Advisor.

14 48. If there is a disagreement between the participating Lessor and the
15 RealPage Pricing Advisor, the dispute is often elevated to the Lessor’s management
16 for resolution, and specific reasons justifying a departure from RealPage’s pricing
17 level are usually required. But RealPage emphasizes the need for discipline among
18 participating Lessors and urges them that for its coordinated algorithmic pricing to
19 be the most successful in increasing rents, participating Lessors must adopt
20 RealPage’s pricing at least 80% of the time. As one example of such encouragement,
21 Jeffrey Roper, RealPage’s main architect, publicly described the problem as: “If you
22 have idiots undervaluing [setting prices independently], it costs the whole system.”

23 49. A RealPage employee reported that these instructions are successful,
24 with as many as 90% (and at least 80%) of RealPage pricing being adopted. As one
25 Lessor explained, RealPage’s coordinated algorithmic pricing required
26 counterintuitive changes in their business practices “because[, upon adopting
27 RealPage’s coordination of pricing,] we weren’t offering concessions nor were we
28 able to negotiate pricing” like they previously had. That Lessor went on to explain

1 that RealPage “maximize[s] rents but you have to be willing to strictly follow it,”
2 and, as a result, “we rarely make any overrides to the recommendations” provided
3 by RealPage. Another Lessor described RealPage as bringing “discipline” and
4 “courage to pricing.”

5 50. Using software it designed, applied to the dataset participating Lessors
6 agreed to provide it, RealPage also allows participating Lessors to stagger their lease
7 renewals to avoid natural periods of oversupply that would persist absent concerted
8 action by would-be rival Lessors.

9 51. One Lessor explained that, using RealPage, Lessors are “now able to
10 stagger lease expirations throughout the month, effectively cutting down on
11 frictional vacancy loss as well as concessions” on price. That Lessor continued that
12 by staggering lease renewals, Lessors have “leveled the lease expirations throughout
13 the year to better match the historical demand for each community, thus positioning
14 us [Lessors] for even higher rent growth.”

15 52. Lessors have publicly admitted that RealPage has allowed them to
16 maintain higher prices in concert, with confidence that they can avoid price cutting
17 and the prisoner’s dilemma.

18 53. This same Lessor commented that while “we [Lessors] are all
19 technically competitors,” that Lessors’ common adoption of and adherence to
20 RealPage’s software “helps us [Lessors] work together,” “to work with a community
21 in pricing strategies, not to work separately.”

22 54. Other Lessors’ comments echo the potency and efficacy of their
23 concerted action.

24 55. Another Lessor reported that RealPage “has given a substantial boost
25 to economic occupancy” (the proportion of gross potential rent actually realized vs.
26 physical occupancy, the proportion of units occupied by tenants), which is to say it
27 caused higher prices and less output.
28

56. Another Lessor explained that by “outsourcing” pricing functions to RealPage, prices are set by RealPage’s “multifamily experts,” “who essentially act like an extension of our team.”

57. And another explained that in following the price over volume, or economic capacity, strategy, they found “that driving our turnover rate up actually captured additional revenue.” The Lessor continued: “The net effect of driving revenue and pushing people out was \$10 million in income.” And the Lessor concluded, “I think that shows that keeping the heads in the beds above all else is not always the best strategy.” But given the prisoner’s dilemma faced by Lessors, rejecting that competitive strategy is only in a Lessor’s economic self-interest if they have assurances that they will not be significantly undercut by a rival. RealPage provides a mechanism through which Lessors reach a common understanding, coordinate their prices, and effectuate that understanding.

The Lessor Defendants and RealPage Have Inflated the Prices and Reduced the Occupancy (i.e., Output) of Residential Real Estate Leases

58. As industry participants including RealPage’s own executives admit, RealPage’s coordinated algorithmic pricing has caused anticompetitive effects in the form of higher prices and reduced output, with a RealPage executive conceding: “I think it’s [RealPage’s coordinated algorithmic pricing is] driving it [higher prices for residential real estate leases], quite honestly.”

59. RealPage advertises that the Lessors that participate in this cartel experience “[r]ental rate improvements, year over year, between 5% to 12% in every market,” the ability to “outperform the market by up to 5%,” and “drive up to an additional 150-200 basis points of hidden yield” that would not otherwise be attainable to a Lessor utilizing independent pricing, rather than coordinated pricing. RealPage refers to independent, competitive pricing as “manual pricing.” RealPage claims to “outperform manual pricing” by 7 percent each year. That is, the Lessors’

1 collusion succeeds in increasing prices above competitive levels by 7 percent each
2 year.

3 60. To conclude that these price increases would be economically irrational
4 and against each Lessors' independent economic self-interest if acting alone (that is,
5 absent assurances that other Lessors would also be exercising pricing "discipline"),
6 or that price increases would be unachievable absent the implementation of
7 coordinated algorithmic pricing by RealPage's participating Lessors, one need look
8 no further than the admissions of RealPage and Lessors, who openly extol the value
9 of cartelization (higher prices, lower output) to each other.

10 61. One Lessor's representative explained, "the beauty of using [RealPage's
11 pricing] is that it pushes [Lessors] to go places that you wouldn't have gone on your
12 own if you weren't using it."

13 62. Another Lessor's representative told panelists at an industry conference
14 that it "raised rents hundreds of dollars," following RealPage's pricing, and noting
15 that the Lessor would not have had "the courage to push [rents] as aggressively as
16 [the RealPage pricing] program has."

17 63. Another Lessor admitted that, in the natural state of play, it simply is
18 "not in [a Lessor's] DNA to raise pricing \$150 to \$200 per unit on a lease turn," but
19 following RealPage's coordinated algorithmic pricing allowed the Lessor to do what,
20 independently, it would not.

21 64. And yet another Lessor noted that, "[i]n our Florida markets, we let the
22 system push as hard as it would go, and we saw increases as high as 20 percent. . . .
23 Left to our own devices, I can assure you we would have never pushed rents that
24 hard. That was a big number."

25 65. And still yet another Lessor observed that it was able to raise rents in
26 situations where market conditions dictated otherwise, with a consultant for that
27 Lessor conceding that "[i]f you'd listened to your gut, you would have lowered your
28 price."

1 66. RealPage itself concedes that these price levels could not be obtained
2 independently, stating: “We believe in overseeing properties as though we own them
3 ourselves. We believe we can deliver better results for you than you would otherwise
4 be able to achieve.” In plain terms, RealPage concedes that its coordinated
5 algorithmic pricing allows Lessors to obtain the same results as a single seller or
6 monopolist—an outcome Lessors “would not otherwise be able to achieve” without
7 RealPage’s pricing and assurances of Lessors’ discipline to that pricing.

8 67. The Covid-19 pandemic is a prime illustration of Lessors’ ability to
9 coordinate pricing through RealPage and achieve market outcomes untethered to
10 what one would expect if Lessors were acting independently of one another. A
11 RealPage Vice President of Revenue Management explained that “at the start of
12 Covid, I think a lot of our [Lessors’] initial reaction, was, ‘oh I need to start dropping
13 rent, I need to start giving concessions” to account for the exodus of renters from
14 major metropolitan areas. But “our [RealPage’s] advisory team and the product did a
15 great job” of resisting that natural competitive outcome. Another RealPage employee
16 agreed with that assessment, noting “we just saw unbelievable resilience and I would
17 say discipline in pricing through the worst of the downturns . . . a lot of people thought
18 we’d see severe rent cuts; that just didn’t happen.” That “resilience” and “discipline”
19 is “unbelievable” precisely because absent assurances that competitor Lessors are not
20 going to undercut a given Lessor on price, such discipline is against the Lessor’s
21 individual economic self-interest.

22 68. RealPage has undertaken this conduct with full and complete knowledge
23 of its illegality. One of RealPage’s pricing software’s main architects, Jeffery Roper,
24 is acutely familiar with the anticompetitive nature of coordinated algorithmic pricing
25 within an industry. Before pioneering RealPage’s software, Roper was Alaska
26 Airlines’ Director of Revenue Management when it and other airlines began using
27 common software to share nonpublic planned routes and prices with each other, with
28 the aim of heading off price wars. The Department of Justice’s Antitrust Division

1 (“DOJ”) reached settlements or consent decrees for price fixing violations with eight
 2 airlines, including Alaska Airlines. Roper—who had his computer and documents
 3 seized by federal agents—relayed about that experience that, “We all got called up
 4 before the Department of Justice in the early 1980s because we were colluding.” He
 5 adds that at the time, “We had no idea” that conduct was unlawful. Having now
 6 brought analogous coordinated algorithmic pricing to multifamily residential real
 7 estate leasing after the DOJ’s airline settlements, however, Roper can no longer claim
 8 ignorance of the unlawful nature of this conduct.

9 **“Plus Factors” Render the Market for Multifamily Residential Real Estate**
 10 **Leases Susceptible to the Formation, Maintenance, and Efficacy of a Cartel**

11 69. The market for the sale of multifamily residential real estate leases from
 12 Lessors to lessees is characterized by numerous features, referred to as “plus factors,”
 13 that render the industry susceptible to collusion, such that the formation,
 14 maintenance, and efficacy of a cartel is more likely. These include (1) high barriers
 15 to entry, (2) high barriers to exit, (3) market concentration, (4) inelastic consumer
 16 demand, (5) relative fungibility of residential real estate leases, (6) exchanges of
 17 competitively sensitive information among horizontal competitors, and (7) numerous
 18 opportunities to collude at trade associations and RealPage functions.

19 70. First, multifamily residential real estate properties owners and operators
 20 face significant entry barriers. These include the high cost of acquiring property,
 21 establishing a property management infrastructure, and ongoing costs of building
 22 maintenance and regulatory compliance. Even small multifamily rental properties
 23 cost millions of dollars to acquire. Large properties, such as those operated by
 24 Greystar, run into the hundreds of millions of dollars to own and manage and take
 25 several years and significant experience to build or acquire. Thus, new entrants into
 26 the residential real estate leasing market are unlikely to discipline cartel pricing.

27 71. Second, lessees of multifamily residential real estate properties face high
 28 exit barriers. Renters typically incur substantial cost and inconvenience when

1 moving, and where price escalation is occurring in broad geographic areas, they
2 might not have a lower priced option in reasonable proximity to where they currently
3 live or work. As such, lessees cannot easily turn to alternative Lessors of multifamily
4 residential real estate properties to discipline cartel pricing.

5 72. Third, the demand for multifamily residential real estate property leases
6 is relatively inelastic. The only realistic alternative to renting is buying, and for most
7 renters, that is not an option financially or logistically. Thus, no reasonable substitutes
8 exist to discipline cartel pricing.

9 73. Fourth, the market for residential real estate property leases is highly
10 concentrated. Most major metropolitan areas are denominated by relatively few
11 sellers, with many large corporations like Greystar having substantial presences in
12 metropolitan areas throughout the United States.

13 74. Fifth, multifamily residential real estate properties are relatively
14 fungible, particularly within classes of properties. That is, when controlling for
15 certain high-level characteristics of properties—such as the number of bedrooms and
16 bathrooms, amenities, location, or the age of the building—properties within those
17 classes are relatively fungible. Lessors have explained that RealPage’s pricing
18 software “is correctly looking at ‘like’ competitor properties and ‘truly comparing
19 apples to apples’ as it relates to competitor apartment pricing.”

20 75. Sixth, RealPage’s participating Lessors, directly and using RealPage as
21 a conduit, share competitively sensitive information with one another. In addition to
22 its price-setting and lease renewal-staggering services, RealPage collects non-public
23 data on multifamily residential real estate properties and creates benchmarking
24 reports that allow for quick comparisons of a Lessor’s performance on occupancy
25 and price for similar property classes vis-à-vis the industry. This function could not
26 be recreated using any public, non-competitively sensitive sources as the advertised
27 rates for residential real estate leases typically diverge from the actual rates.

1 76. Seventh, RealPage and participating Lessors have ample opportunities
2 to collude.

3 77. As just one example, RealPage operates a private RealPage User Group
4 Forum, an association of some thousand participating Lessors, which, according to
5 RealPage, aims “to improve communications between RealPage and the user [Lessor]
6 community,” while “promot[ing] communication between users [Lessors]”
7 themselves. Within that Forum is an “Idea Exchange,” where Lessors submit their
8 own recommendations for changes or improvements to RealPage’s offerings, as well
9 as provide comments on proposed changes that RealPage is considering
10 implementing to its software offerings.

11 78. As another example, RealPage organizes certain in-person events and
12 collaboration among participating Lessors. It invites some to serve on a “Steering
13 Committee,” which liaises with certain subcommittees of the RealPage User Group
14 Forum to ascertain Lessors’ suggestions for RealPage’s software offerings and with
15 the explicit instruction to consider “the mutual benefit of all users.” RealPage also
16 organizes a marquee annual, multi-day event called “RealWorld,” where Lessors
17 gather along with approved partners and executives from RealPage to network,
18 exchange insights into key initiatives in the industry, and learn best practices for using
19 RealPage tools. Over the past five years, those conferences have been held in Las
20 Vegas, NV, Nashville, TN, Orlando, FL, and virtually during the Covid-19 pandemic.

21 79. And RealPage has invited Lessors to attend periodic “summits” to
22 discuss RealPage’s pricing software with RealPage and with one another, covering
23 topics including (1) “Competitive Rent Analysis” or “[m]ethods of establishing and
24 maintaining amenity-based prices for each unit and floor plan, factoring in
25 comparable peer pricing,” (2) “Supply Forecasts” and “Demand Forecasts,” as well
26 as (3) RealPage’s “Pricing Engine,” or “[m]ethods to price units in real time based
27 on statistically validated price elasticity models.”
28

80. Finally, industry trade associations offer RealPage and participating Lessors additional opportunities to conspire. As an illustrative example, the National Multifamily Housing Council (“NMHC”), which advertises itself as “the place where the leaders of the apartment industry come together to guide their future success,” holds several events every year, including in person “Apartment Strategy Conference,” an “Annual Meeting,” a “Fall Meeting,” hosted in cities including San Diego, CA, Las Vegas, NV, and Washington, DC. NMHC counts among its “Chair’s Circle Sponsors” RealPage, Greystar, and more participating Lessors. Of note, NMHC “tracks market conditions through NMHC member surveys as well as data from data provider partners,” to provide “industry benchmarks” on topics including “In Place Rent Per Square Foot,” “Rent Change – New Leases,” and “Rent Change – Renewals.”

CLASS ACTION ALLEGATIONS

81. Plaintiff brings this action on behalf of themselves and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) as representatives of the Class, which is defined as follows:

82. All persons and entities in the United States and its territories that are direct purchasers of multifamily residential real estate leases from a Lessor participating in RealPage’s pricing software and/or lease renewal staggering software programs, or from a division, subsidiary, predecessor, agent, or affiliate of such Lessor, at any time during the period of October 18, 2018 until the Defendants’ unlawful conduct and its anticompetitive effects cease to persist.¹

83. The Class is so numerous that joinder of all members in this action is impracticable. There are tens of thousands if not hundreds of thousands of members in the proposed Class.

84. Plaintiff’s claims are typical of those of the Class.

¹ Federal and state government entities are excluded from the Class.

1 85. Plaintiff and all members of the Class were all injured by the same
2 unlawful conduct, which resulted in all of them paying more for multifamily
3 residential leases than they otherwise would have in a competitive market.

4 86. Plaintiff will fairly and adequately protect and represent the interests of
5 the Class. The interests of the Plaintiff are not antagonistic to the Class.

6 87. Questions of law and fact common to the members of the Class will
7 predominate over questions, if any, that may be individual to individual class
8 members, since the Defendants have acted and refused to act on grounds generally
9 applicable to the Class.

10 88. Questions of law and fact common to the Class include:

- 11 a. Whether Defendants have entered into a formal or informal
12 contract, combination, conspiracy, or common understanding to
13 artificially inflate price and/or artificially suppress supply of
14 multifamily residential real estate leases from competitive levels;
- 15 b. If Defendants entered into such a formal or informal contract,
16 combination, conspiracy, or common understanding, whether that
17 conduct violates Section 1 of the Sherman Act under the *per se*, quick
look, or rule of reason modes of analysis;
- 18 c. If Defendants entered into such a formal or informal contract,
19 combination, conspiracy, or common understanding, whether that
20 conduct has in fact artificially inflated price and/or artificially
21 suppressed supply of multifamily residential real estate leases from
competitive levels;
- 22 d. The proper measure of damages; and
- 23 e. The contours of appropriate injunctive relief to remediate the
24 anticompetitive effects of the challenged conduct in the future.

25 89. Plaintiff is represented by counsel who are experienced and competent
26 in the prosecution of complex antitrust and unfair competition class actions.

27 90. Class action treatment is the superior method for the fair and efficient
28 adjudication of the controversy in that, among other things, such treatment will permit

1 a large number of similarly situated persons or entities to prosecute their common
 2 claims in a single forum simultaneously, efficiently, and without the unnecessary
 3 duplication of effort and expense that numerous individual actions would engender.
 4 The benefits of proceeding through the class mechanism, including providing injured
 5 persons or entities with a method of obtaining redress for claims that might not be
 6 practicable for them to pursue individually, substantially outweigh any difficulties
 7 that may arise in the management of this class action.

8 **COUNT ONE**

9 **Agreement in Restraint of Trade in Violation of Section 1 of the Sherman Act**

10 91. Plaintiff repeats and realleges all previous allegations as if fully set forth
 11 herein.

12 92. Defendants have formed a cartel to artificially inflate the price of and
 13 artificially decrease the supply and output of multifamily residential real estate leases
 14 from competitive levels.

15 93. The Defendants' cartel has caused the Class to suffer overcharge
 16 damages.

17 94. There are no procompetitive justifications for the Defendants' cartel,
 18 and any proffered justifications, to the extent legitimate, could be achieved through
 19 less restrictive means.

20 95. The Defendants' cartel is unlawful under a per se mode of analysis. In
 21 the alternative, the Defendants' cartel is unlawful under either a quick look or rule of
 22 reason mode of analysis.

23 **PETITION FOR RELIEF**

24 Plaintiff petitions for the following relief:

25 A. A determination that this action may be maintained as a class action
 26 pursuant to Federal Rule of Civil Procedure 23, that Plaintiff be appointed class
 27 representative, and that Plaintiff's counsel be appointed as class counsel.

1 B. A determination that the conduct set forth herein is unlawful under
2 Section 1 of the Sherman Act under either a *per se*, quick look, or rule of reason mode
3 of analysis.

4 C. A judgment enjoining Defendants from engaging in further unlawful
5 conduct.

6 D. An award of attorneys' fees and costs.

7 E. An award of pre- and post-judgment interest on all amounts awarded;
8 and

9 F. Such other relief as the Court deems just and equitable.

10 **REQUEST FOR A JURY TRIAL**

11 Plaintiff requests a trial by jury of all issues so triable.

12
13 Dated: November 15, 2022

Respectfully submitted,

14 THE VAN WINKLE LAW FIRM

15
16 By /s/ S. Ferrell Alman, Jr.
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